

AMENDED IN SENATE MAY 9, 2002

AMENDED IN SENATE APRIL 30, 2002

SENATE BILL

No. 1452

Introduced by Senator Escutia

February 15, 2002

An act to amend Sections 1102.5 and 1106 of, and to add Sections 1102.6, 1102.7, 1102.8, and 1102.9 to, the Labor Code, relating to whistleblowers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1452, as amended, Escutia. Whistleblowers.

Existing law prohibits employers from making, adopting, or enforcing a policy that prevents an employee from disclosing violations of ~~law~~ *state or federal statute, or a violation or noncompliance with a state or federal regulation* to a government or law enforcement agency, or from retaliating against an employee who makes a disclosure.

This bill would extend these protections to employees who report a violation of ~~public policy~~ *a state or federal rule, who refuse to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation*, or who exercised these rights in former employment. This bill would add an additional civil penalty for violations. This bill would establish a "Whistleblower Hotline" within the office of the Attorney General to receive telephone reports of violations of ~~law or public policy~~ *state or federal statutes, rules, or regulations* by an employer.

This bill would create a state-mandated local program by requiring, subject to criminal penalties, a corporation, limited liability company,

officer or director of a corporation, officer or member of a limited liability company, or manager of a corporation or limited liability company who has significant responsibility for the financial operations or financial transactions of the business, to report actions taken or about to be taken by the corporation or limited liability company that would constitute financial fraud, or would cause serious financial harm to the shareholders or investors of the corporation or limited liability company.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares that unlawful
- 2 activities of private corporations may result in damages not only
- 3 to the corporation and its shareholders and investors, but also to
- 4 employees of the corporation and the public at large. The damages
- 5 caused by unlawful activities may be prevented by the early
- 6 detection of corporate wrongdoing. The employees of a
- 7 corporation are in a unique position to report corporate
- 8 wrongdoing to an appropriate government or law enforcement
- 9 agency
- 10 The Legislature finds and declares that it is the public policy of
- 11 the State of California to encourage employees to notify an
- 12 appropriate government or law enforcement agency when they
- 13 have reason to believe their employer is violating laws enacted for
- 14 the protection of corporate shareholders, investors, employees,
- 15 and the general public, ~~or is acting in violation of public policy.~~
- 16 It is the intent of the Legislature to protect employees who
- 17 refuse to act at the direction of their employer when the required
- 18 action would violate public policy, or refuse to participate in
- 19 activities of an employer that would result in a violation of public
- 20 ~~policy law.~~
- 21 SEC. 2. Section 1102.5 of the Labor Code is amended to read:



1102.5. (a) An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, *or a violation or noncompliance with a state or federal regulation, or a violation of public policy.* *federal rule or regulation.*

(b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, *or a violation or noncompliance with a state or federal regulation, or a violation of public policy.* *federal rule or regulation.*

(c) An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation *of public policy.* *of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.*

(d) An employer may not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in former employment.

(e) A report made by an employee of a government agency to his or her employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b).

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

(g) This section shall not apply to rules, regulations, or policies which implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950), the physician-patient privilege of Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

~~SEC. 3. Section 1102.6 is added to the Labor Code, to read:~~

~~1102.6. In a civil action or administrative proceeding, once an employee establishes a prima facie case that an activity protected by Section 1102.5 was a contributing factor to the alleged retaliatory action by the employer under Section 1102.5, the burden of proof shifts to the employer to prove by clear and convincing evidence that the alleged retaliatory action occurred~~

1 ~~for legitimate and independent reasons, and would have occurred~~
2 ~~even if the employee had not engaged in an activity protected~~
3 ~~under Section 1102.5.~~

4 ~~SEC. 4.~~

5 *SEC. 3.* Section 1102.7 is added to the Labor Code, to read:

6 1102.7. (a) The office of the Attorney General shall maintain
7 a whistleblower hotline to receive calls from persons who have
8 information regarding possible violations of state or federal laws
9 ~~by employers relating to the health and safety of employees or the~~
10 ~~public, statutes, rules, or regulations, or violations of fiduciary~~
11 ~~responsibility by a corporation or limited liability company to its~~
12 ~~shareholders, investors, or employees, or violations of public~~
13 ~~policy by employers.~~

14 (b) During the initial investigation of an alleged violation, the
15 Attorney General shall hold in confidence information disclosed
16 through the whistleblower hotline, including the identity of the
17 caller disclosing the information, and the employer identified by
18 the caller.

19 ~~SEC. 5.~~

20 *SEC. 4.* Section 1102.8 is added to the Labor Code, to read:

21 1102.8. An employer shall prominently display in lettering
22 larger than size 14 pica type a list of employees' rights and
23 responsibilities under the state's whistleblower laws, including the
24 telephone number of the whistleblower hotline described in
25 Section 1102.7.

26 ~~SEC. 6.~~

27 *SEC. 5.* Section 1102.9 is added to the Labor Code, to read:

28 1102.9. (a) (1) A corporation or limited liability company,
29 or an officer or director of a corporation, or an officer or member
30 of a limited liability company is guilty of a public offense
31 punishable by imprisonment in the county jail for a term not
32 exceeding one year, or by a fine not exceeding ten thousand dollars
33 (\$10,000), or by both that fine and imprisonment; or by
34 imprisonment in the state prison for 16 months, two, or three years,
35 or by a fine not exceeding twenty-five thousand dollars (\$25,000);
36 or by both that fine and imprisonment, but if the defendant is a
37 corporation or limited liability company, the fine may not exceed
38 one million dollars (\$1,000,000), if that corporation or limited
39 liability company, or officer or director of a corporation, or officer
40 or member of a limited liability company:

1 (A) Has actual knowledge of an action taken or about to be
2 taken by the corporation or limited liability company that would
3 constitute financial fraud, or would cause serious financial harm
4 to the shareholders or investors of the corporation or limited
5 liability company.

6 (B) Within 15 days after the actual knowledge is acquired,
7 knowingly fails to do both of the following:

8 (i) Inform the Attorney General in writing, unless the
9 corporation, limited liability company, ~~or manager~~ officer,
10 director, or member has actual knowledge that the Attorney
11 General has been informed.

12 (ii) Warn its affected shareholders and investors in writing,
13 unless the corporation, limited liability company, ~~or manager~~
14 officer, director, or member has actual knowledge that the
15 shareholders and investors have been warned.

16 (2) This subdivision shall not apply to a manager, as defined in
17 paragraph (1) of subdivision (f).

18 (b) A person who is a manager of a corporation or limited
19 liability company, as defined in paragraph (1) of subdivision (f),
20 is guilty of a public offense punishable by imprisonment in the
21 county jail for a term not exceeding one year, or by a fine not
22 exceeding ten thousand dollars (\$10,000), or by both that fine and
23 imprisonment; or by imprisonment in the state prison for 16
24 months, two, or three years, or by a fine not exceeding twenty-five
25 thousand dollars (\$25,000); or by both that fine and imprisonment,
26 if that person:

27 (1) Has actual knowledge of an action taken or about to be
28 taken by the corporation or limited liability company that would
29 constitute financial fraud, or would cause serious financial harm
30 to the shareholders or investors of the corporation or limited
31 liability company.

32 (2) Within 15 days after the actual knowledge is acquired,
33 knowingly fails to inform the Attorney General in writing, unless
34 the manager has actual knowledge that the Attorney General has
35 been informed.

36 (c) The requirement for disclosure is not applicable if the action
37 taken or about to be taken by the corporation or limited liability
38 company that would constitute financial fraud, or would cause
39 serious financial harm to the shareholders or investors of the
40 corporation or limited liability company is abated within the time

1 prescribed for reporting, unless the appropriate regulatory agency
2 nonetheless requires disclosure by regulation.

3 (d) If the action reported in a written notice received by the
4 Attorney General pursuant to this section implicates the regulatory
5 authority of an agency other than the Attorney General, the
6 Attorney General shall notify that agency of the written notice
7 within 24 hours and shall promptly forward the written notice to
8 that agency.

9 (e) If the Attorney General was not notified pursuant to
10 subparagraph (B) of paragraph (1) of subdivision (a), or paragraph
11 (2) of subdivision (b), but the corporation, limited liability
12 company, or manager reasonably and in good faith believed that
13 they were complying with the notification requirements of this
14 section by notifying a government agency listed in paragraph (7)
15 of subdivision (f), no penalties shall apply.

16 (f) For purposes of this section:

17 (1) “Manager” means a person having both of the following:

18 (A) Management authority over a business entity.

19 (B) Significant responsibility for an aspect of a business that
20 includes actual authority for the financial operations or financial
21 transactions of the business.

22 (2) “Shareholder or investor” means a person or entity that is
23 a shareholder of the corporation or member of the limited liability
24 company, or that holds any security or equity interest in the
25 corporation or limited liability company at the time the disclosure
26 is required pursuant to subparagraph (B) of paragraph (1) of
27 subdivision (a).

28 (3) “Actual knowledge,” means information that would
29 convince a reasonable person that the financial fraud or exposure
30 to serious financial harm exists.

31 (4) “Serious financial harm,” means exposure to substantial
32 financial losses that are not readily apparent to a shareholder or
33 investor who is likely to be harmed.

34 (5) “Financial fraud” means an action by a corporation or
35 limited liability company that meets the requirements for
36 actionable fraud pursuant to Section 1710 of the Civil Code that
37 causes or is likely to cause serious financial harm to the
38 shareholders or investors of the corporation or limited liability
39 company.



(6) “Warn its affected shareholders and investors” means to give sufficient description of an action taken or about to be taken that would constitute financial fraud or would cause serious financial harm to shareholders and investors of the corporation or limited liability company.

(7) “Appropriate government agency” means an agency on the following list that has regulatory authority with respect to the financial operations of a corporation or limited liability company:

(A) Department of Corporations.

(B) Department of Insurance.

(C) Department of Financial Institutions.

(D) United States Securities and Exchange Commission.

(g) Notification received pursuant to this section shall not be used against a manager in a criminal case, except a prosecution for perjury or for giving a false statement.

~~SEC. 7.~~

SEC. 6. Section 1106 of the Labor Code is amended to read:

1106. For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8, 1103, 1104, and 1105, “employee” includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California.

SEC. 7. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*